

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRTEENTH REGION**

THE INGALLS MEMORIAL HOSPITAL

and

NATIONAL NURSES ORGANIZING
COMMITTEE

Case No. 13-RC-246324

MOTION TO STRIKE UNION’S POST-HEARING BRIEF

The Ingalls Memorial Hospital (“Ingalls”) moves to strike the post-hearing brief filed by NNOC/NU (“Union”) because it exceeds the page limit established by the Region by more than sixty percent (60%) and otherwise violates the Board’s Rules and Regulations.

More specifically, the Hearing Officer at the close of the hearing notified both parties on the record that the Regional Director limited the length of post-hearing briefs by both parties to twenty-five (25) pages. Under Section 102.5(a) of the NLRB’s Rules and Regulations, 29 C.F.R. § 102.5(a), post-hearing briefs must be double-spaced and in 12-point font. In flagrant violation of the Regional Director’s order and the Board’s Rules and Regulations, the Union filed a 21-page single-spaced brief that additionally included 14 single-spaced footnotes in 10-point font.

The Union’s egregious violation of the Board’s Rules and Regulations is effectively an attempt to double the page limit imposed by the Regional Director and thereby gain advantage over Ingalls in the briefing. NLRB Rules and Regulations, 29 C.F.R. § 102.5(b), required the Union to file a motion for leave to file an overlength brief at least ten (10) days in advance of its due date if it believed the Region’s order regarding page limits provided insufficient space. Having not filed such a motion or been granted leave to file an overlength brief, the Region should follow the Board’s Rules and Regulations and strike the Union’s brief.

In further support of its motion, Ingalls states as follows:

1. On or about August 9, 2019, the Union filed a representation petition in the matter captioned above.

2. The Regional Director ordered a pre-election hearing regarding certain issues presented by the petition relating to the scope of the appropriate voting unit.

3. A representation case hearing occurred from August 19, 2019 to August 23, 2019. At the conclusion of the hearing on August 23, 2019, the Regional Director, through the Hearing Officer, informed the parties that he would permit post-hearing briefs, which is unusual under the election rules enacted in 2015. Tr. 992.

4. **But in doing so, the Regional Director, through the Hearing Officer, strictly limited each party to a brief not to exceed twenty-five (25) pages.** The Hearing Officer made that limit very clear and did so both on the record and during off-the-record discussions. Tr. 992-93. The Union's counsel raised no objection to the page limitations at the hearing or thereafter.

5. The NLRB's Rules and Regulations, 29 C.F.R. § 102.5(a), govern as to the form of all papers filed with the "Regional Director" and any "Hearing Officer." They provide that any filings must comply with certain mandatory parameters:

- (a) There must be one inch margins on all four sides of the page;
- (b) All text, whether body text or footnote text, must be at least 12-point font when proportionally-spaced typeface is used (such as Times New Roman, which is what the Union used in its noncompliant filing);
- (c) All text must be double-spaced, except that headings, footnotes, and quotes over two lines long may be single spaced; and
- (d) Filings in excess of 20 pages must include a table of contents and a table of authorities.

6. To prevent prejudice to other parties, any party seeking to file an overlength brief must by Rule file a motion before doing so and affirmatively advise of “the reasons for the requests.” Unless otherwise stated in the Rules and Regulations, that motion cannot be filed less than ten (10) days in advance of the filing’s due date. NLRB Rules and Regulations, 29 C.F.R. § 102.5(b). Indeed, entertaining such a motion here would only further prolong delay that is of the Union’s own making.

7. The Union’s brief, served upon counsel for Ingalls by the Union’s counsel via e-mail at 12:08 p.m. on September 3, 2019, was in flagrant violation of Sections 102.5(a) and 102.5(b) of the Board’s Rules and Regulations. Specifically:

(a) **The Union’s brief is twenty-one (21) single-spaced pages**, in violation of the Board’s requirement that filings be double-spaced and in violation of the overall limit ordered by the Regional Director of twenty-five double-spaced pages. The body text of the Union’s brief would be in excess of forty (40) double-spaced pages if properly formatted.

(b) The Union’s brief contains fourteen (14) single-spaced footnotes, one of which (footnote 5) was nearly a half-page in length. The Union’s footnotes are in 10-point font, in violation of the Board’s requirement that all text be in 12-point font (or larger). This would have added additional pages to the brief if property formatted.

(c) Sixteen (16) pages of the Union’s single-spaced, twenty-one (21) page brief have a bottom margin that is less than one inch, a further violation of the applicable rule.¹

¹ In Adobe Acrobat, the ruler function shows whether text is in the one-inch section of a page that is supposed to be a blank margin. To turn on the ruler function, click on View > Show/Hide > Rulers & Grids > Rulers.

(d) Although the Union's brief was in excess of 20 total pages (despite being single-spaced), it fails to include a table of contents or table of authorities as required by the NLRB's Rules and Regulations.

8. The NLRB maintains uniform nationwide standards regarding the form of filings – regardless of location, whether California or Illinois – to ensure consistency and to level the playing field among parties. By unilaterally disregarding the NLRB's requirements and filing an oversized brief that ignored every requirement set forth in Section 102.5(a) of the Board's Rules and Regulations, the Union attempts to gain an unfair advantage by presenting additional arguments that would not have fit in a filing that complied with the Board's Rules and Regulations.

9. Refusing to strike the Union's noncompliant and oversized brief deprives Ingalls of an equal opportunity to be heard. Both parties were operating under the time constraints imposed by the Regional Director, but the Union chose to ignore on a wholesale basis the Board's clear and uncomplicated standards relating to the form of filings to cram in as many arguments as it could, notwithstanding the Regional Director's directive regarding page limits. This is the same reason why courts and agencies, including the NLRB, strictly enforce page limits, typeface requirements, spacing requirements, and other standards regarding the form of filings.

10. Should the Region decline to strike the brief, Ingalls requests in the alternative five (5) additional days to file a Reply Brief, not to exceed fifteen (15) total double spaced pages (40 total pages over two briefs) so as to remedy any prejudice from the Union's violation of the NLRB's Rules and Regulations and the Regional Director's order regarding the length of post-hearing briefs.

WHEREFORE, Ingalls respectfully requests that the Regional Director strike the Union's post-hearing brief and refuse to consider it in his Decision or, in the alternative, grant Ingalls additional time to file a Reply.

Dated: Chicago, Illinois
September 3, 2019

Respectfully submitted,

THE INGALLS MEMORIAL HOSPITAL

By: s/ Mark L. Stolzenburg
One of Its Attorneys

Mark L. Stolzenburg
Vedder Price P.C.
222 North La Salle Street, Suite 2600
Chicago, Illinois 60601-1003
Phone: 312.609.7512
E-mail: mstolzenburg@vedderprice.com

CERTIFICATE OF SERVICE

I certify that on September 3, 2019, I filed the foregoing Motion to Strike Union's Post-Hearing Brief by e-filing, and I served true copies of this document by e-mail upon the following recipients:

Joe Torres
The Karmel Law Firm
221 N. La Salle St., Suite 1550
Chicago, IL 60601
joe@karmellawfirm.com

Marie Walcek
NNOC/NNU
155 Grand Ave.
Oakland, CA 94612
MWalcek@calnurses.org

Daniel Nelson
Ximena Molano
National Labor Relations Board, Region 13
219 S. Dearborn St., Suite 808
Chicago, IL 60604
Daniel.Nelson@nrlrb.gov
Ximena.Molano@nrlrb.gov

s/Mark L. Stolzenburg

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13**

THE INGALLS MEMORIAL HOSPITAL

Employer

and

Case 13-RC-246324

**NATIONAL NURSES ORGANIZING
COMMITTEE (NNOC)**

Petitioner

ORDER GRANTING EMPLOYER SUPPLEMENTAL BRIEF

Counsel for the Employer, on September 3, 2019, filed a Motion to Strike Union's Post-Hearing Brief requesting to strike the brief filed by the Petitioner because it exceeded the page limit established by the Region and otherwise violated the Board's Rules and Regulations or, in the alternative, be permitted five additional days to file a Reply Brief not to exceed 15 double-spaced pages, not to exceed 40 pages total between its two briefs.

I hereby order that the Employer may file a supplemental brief, not a reply brief, of 15 double-spaced pages, not to exceed 40 pages total between its original and supplemental briefs, and direct that the Employer's supplemental brief be filed with the Region on or before September 9, 2019.

Dated: September 4, 2019

/s/ Paul Hitterman

Paul Hitterman
Acting Regional Director
National Labor Relations Board
Region 13
Dirksen Federal Building
219 South Dearborn Street, Suite 808
Chicago, IL 60604-2027